

National NAGPRA FY08 Midyear Report

For the period October 1, 2007 – March 31, 2008

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NAGPRA Introduction

This report covers activities of the National NAGPRA Program for the first half of fiscal year 2008 (FY 2008- October 1, 2007 – March 31, 2008). All information and statistics reported are current as of close of business, March 31, 2008. Regular reports on National NAGPRA's work are available on the program's Website:

<http://www.cr.nps.gov/nagpra/DOCUMENTS/INDEX.htm>.

The Native American Graves Protection and Repatriation Act (NAGPRA) was enacted on November 16, 1990 to address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American cultural items, including human remains, funerary objects, sacred objects, and objects of cultural patrimony. The Act assigned implementation responsibilities to the Secretary of the Interior, including:

- Administering the obligations of museums and Federal agencies with regard to collections of cultural items, as follows:
 - Extending inventory deadlines for museums that demonstrate a good faith effort to comply with the law,
 - Publishing notices for museums and Federal agencies in the Federal Register,
 - Creating and maintaining a database of Culturally Unidentifiable Human Remains,
 - Making grants to assist museums, Indian tribes, and Native Hawaiian organizations in fulfilling museum responsibilities and the opportunities for tribes under the Act,
 - Assessing civil penalties on museums that fail to comply with provisions of the Act, and
 - Establishing and providing staff support to the Native American Graves Protection and Repatriation Review Committee;
- Providing oversight and technical assistance in those instances where there are excavations and discoveries of cultural items on Federal and Indian lands;
- Promulgating implementing regulations;
- Providing technical assistance, through:
 - Training programs,
 - Website information,
 - Reports prepared for the Review Committee, and
 - Supporting law enforcement investigation allegations of illegal trafficking in Native American human remains and cultural items.

The National Park Service was delegated some of these responsibilities shortly after NAGPRA became law. The National Park Service also has compliance obligations for parks. National NAGPRA is the omnibus compliance program, the constituents groups of which are all federal agencies, museums that receive federal funds, tribes and Native Hawaiian organizations.

This report and subsequent reports will follow the organization of the National NAGPRA program and its responsibilities pertaining to collections, excavations/discoveries, regulations, and technical assistance given to tribes and the museums and Federal agencies that have obligations for NAGPRA compliance.

Collections

The sections of NAGPRA relating to collections describe the inventories, summaries, grants, civil penalties and the Review Committee which further aspects of the administration of the law. These provisions pertain to the responsibilities of Federal agencies and museums that receive Federal funds to inventory collections of Native American human remains and associated funerary objects in consultation with potentially affiliated tribes and to submit an itemized list to the National NAGPRA Program. The cultural affiliation decisions of agencies and museums made in inventories are reflected in Notices of Inventory Completion and in the list of Culturally Unidentifiable Human Remains, which are available on public access databases. Summaries of the remainder of the Native American collections in the possession or control of Federal agencies and museums generally describe the Native American unassociated funerary objects, sacred objects, and objects of cultural patrimony which inform consultation of museums and Federal agencies with tribes on repatriation. Decisions to effectuate repatriation of unassociated funerary objects, sacred objects and objects of cultural patrimony are reflected in the published Notices of Intent to Repatriate.

***Final regulations published on March 21, 2007, effective April 20, 2007, require museums and Federal agencies receiving a new collection, or having collections of new Indian tribes, to prepare or update inventories within 2 years and summaries within 6 months. If the museum receives Federal funds for the first time, summaries are due in 3 years and inventories in 5 years.

Grants are available to museums and tribes to fund projects for consultation and accomplish cultural identification of items and to cover costs of repatriation. Civil penalties may be imposed upon museums found in non-compliance with the law by failing to submit inventories and summaries, consult with tribes, and to repatriate cultural items in a timely manner. The entire NAGPRA process pertaining to collections is within the jurisdiction of the Native American Graves Protection and Repatriation Review Committee which advises the Secretary on implementation and makes recommendations toward the resolution of disputes.

The following overview of summaries, inventories and culturally unidentifiable human remains reflect an update from numbers reported in prior reports and based upon a review of the National NAGPRA Program records as of March 31, 2008.

The National NAGPRA Program is in the process of notifying those museums and federal agencies with draft documents submitted in 2002 and prior, but which have not yet given their approval to National NAGPRA to publish a notice, that the pending document will be deemed withdrawn if not promptly approved by them as a notice to be published. To be in compliance with the law, those museums and federal agencies are encouraged to refresh their efforts, in consultation with tribes, and submit notices for publication. Thus far in FY 2008 37 drafts have been withdrawn and 2 have been published, leaving 64 remaining to be resolved.

For more information on notices, contact Jaime Lavalley, notice backlog reduction project, National NAGPRA, (Jaime_Lavalley@contractor.nps.gov).

Summaries and Notices of Intent to Repatriate:

Summaries have been received from 1,065 institutions. Additionally, 459 statements of “no summary required” have been received.

There have been 394 Notices of Intent to Repatriate published, an increase of 18 notices thus far in FY 2008. These 394 notices account for 133,856 funerary objects, 3,751 sacred objects, 365 objects of cultural patrimony, 779 sacred objects that are also cultural patrimony, and 215 undesignated cultural items. The 18 new notices represent 4,367 unassociated funerary objects, 153 sacred objects, 62 objects of cultural patrimony, 6 sacred objects that are also objects of cultural patrimony, and no undesignated cultural items.

Inventories and Notices of Inventory Completion:

Inventories have been received from 1,254 institutions. Of these, 556 contain decisions as to cultural affiliation of Native American human remains, and 682 contain listings of culturally unidentifiable Native American human remains. Note: There may be duplication of reporting for collections as the law directs those museums with possession or control of collections to submit an inventory and several museums may have collections belonging to Federal agencies, where both the museum and federal agency submitted an inventory.

There have been 1,062 Notices of Inventory Completion published accounting for 33,792 human remains and 689,178 associated funerary objects. There were 46 notices published thus far in FY 2008, accounting for 1,086 human remains and 4,114 associated funerary objects.

Culturally Unidentifiable Human Remains:

As part of providing administrative support for the Review Committee, National NAGPRA has compiled the Review Committee’s inventory of culturally unidentifiable (CUI) human remains, as required by 25 U.S.C. 3006 (c)(5). National NAGPRA has entered 682 inventories from 623 institutions containing determinations of culturally unidentifiable Native American human remains accounting for 118,400 individuals for whom cultural affiliation has not yet been determined and 828,641 funerary objects associated with those individuals. The number of CUI subsequently culturally identified to date is 2,321 and the number of CUI transferred by a disposition to a tribe is one individual thus far this year, for a total of 2,384. Pending regulations that will specify a process for disposition of CUI, requests for recommendations for disposition can be presented to the Review Committee which makes recommendations to the Secretary. Notices of disposition are published upon receipt of Secretarial authorization to allow 30 days for competing claims to be lodged prior to transfer of control.

Grants:

Congress appropriated \$ 2.4 million for grants in FY 2008. The grant application deadline for consultation/documentation grants was March 3, 2008. Repatriation grants are received on a rolling basis. A total of 39 grants applications have been received: 33 consultation/documentation proposals and 6 repatriation funding requests. Of these 28 are from Indian tribes and Native Hawaiian organizations and 11 are from museums. The total amount of the requests and funds held for repatriation grants during FY 2008 is \$2,225,620. The number of requests from museums has increased slightly, while the number of requests from tribes has dropped by 23%.

FY2007 grantees are midway through their grant cycle and interim reports will be due at the end of April. Based on their grant applications, over 700 human remains will be documented for repatriation as well as thousands of objects of sacred and cultural patrimony. In addition, several coalitions have planned education and outreach events. The 36 grantees represent over 221 partnerships and consultations with tribes and museums across the U.S.

Grant applications for consultation/documentation projects are reviewed by an outside panel, which will meet on May 5-6, 2008. Each applicant will receive an individualized letter from the grants coordinator containing valuable feedback obtained from the panel to assist applicants in preparing better grant proposals in the future and in administering successful projects. For more information on grants, contact Sangita Chari, grants coordinator, National NAGPRA, (Sangita_Chari@nps.gov).

Civil Penalties:

The civil penalties rule (43 C.F.R. 10.12) was published in 1997 as an interim rule, and in 2003 as a final rule. In May 2005, the Secretary of the Interior issued a Secretarial Order placing responsibility for civil penalties within the National NAGPRA program to provide staff support to the Assistant Secretary for Fish and Wildlife and Parks. The NAGPRA civil penalty coordinator, who serves in the National NAGPRA Program, and a National Park Service law enforcement agent work as a team and provide staff support to the Assistant Secretary. For more information on civil penalties, contact David Tarler, enforcement coordinator, National NAGPRA, (David_Tarler@nps.gov).

The NAGPRA regulations set forth 8 ways that a museum might fail to comply with the Act or its regulations (43 C.F.R. 10.12 (b)(1)):

1. Sale or transfer of NAGPRA items contrary to NAGPRA.
2. Failure to complete a summary.
3. Failure to complete an inventory.
4. Failure to notify tribes within 6 months after completion of the inventory.
5. Refusal to repatriate.
6. Repatriation prior to publishing a notice in the Federal Register.
7. Failure to consult with tribes and/or lineal descendants.
8. Failure to inform recipients that items have been treated with of pesticides.

A priority of the civil enforcement team has been an assessment of all pending files and the establishment of file controls and templates for notice letters to be issued by the Assistant Secretary. The National NAGPRA website contains guidance on allegations that a museum has failed to comply, complete with a template letter for reporting a violation.

www.cr.nps.gov/nagpra/civil_penalties

To date, the investigation of 45 allegations of failure to comply, made against 15 museums, has yielded a determination of failure to comply on 12 counts against 10 museums and a determination that the allegation was unsubstantiated on 33 counts. The 12 substantiated counts of failure to comply include 1 count of sale or transfer of NAGPRA items contrary to NAGPRA (43 C.F.R. 10.12 (b)(1)(i)), 1 count of failure to complete a summary (43 C.F.R. 10.12 (b)(1)(ii)), 6 counts of failure to complete an inventory (43 C.F.R. 10.12 (b)(1)(iii)), 1 count of refusal to repatriate (43 C.F.R. 10.12 (b)(1)(v)), and 3 counts of failure to consult with tribes (43 C.F.R. 10.12 (b)(1)(vii)). During the first half of FY2008, the investigation of 14 allegations of failure to

comply, made against 3 museums, has yielded a determination of failure to comply on 3 counts against 2 museums and a determination that the allegation was unsubstantiated on 11 counts.

A museum receiving a notice of failure to comply has 45 days to take specific action, as set forth in the NAGPRA regulations, before a penalty assessment may issue. The civil penalty team serves as staff to the Assistant Secretary on penalty assessments. To date, 2 notices of penalty assessment have been completed by the civil penalty team and issued by the Assistant Secretary. Together, the two notices assessed \$6,250 in penalties, which have been collected.

Museums receiving a notice of failure to comply or a notice of penalty assessment are entitled to an administrative hearing. Thus far, no museums have requested a hearing, and the 2 museums for which notices of penalty assessment were completed have taken action to come into compliance with the law.

Review Committee:

The members for FY 2008 of the Review Committee are: Ms. Rosita Worl (chair), Mr. Alan Goodman, Mr. Willie Jones, Mr. Colin Kippen, Mr. Dan Monroe, Ms. Donna Augustine, Mr. Vincas P. Steponaitis. The current terms of Mr. Monroe and Mr. Jones will expire in this year and nominations are being accepted until May 30, 2008.

Dr. Timothy McKeown serves as the Review Committee's Designated Federal Officer. The DFO complies with all filings required by the Federal Advisory Committee Act (FACA). For more information on the Review Committee contact, C. Timothy McKeown, Designated Federal Official (Tim_Mckeown@nps.gov).

On October 15-16 2007, the Review Committee met in Phoenix, Arizona. On the agenda were five requests for recommendations regarding the disposition of culturally unidentifiable human remains. The Review Committee made recommendations regarding disposition of culturally unidentifiable Native American human remains and associated funerary objects under the control of Effigy Mounds National Monument, Michigan Technological University, and Binghamton University. The Review Committee also recommended revision of its review and findings procedures to specifically address recommendations for disposition of culturally unidentifiable human remains. The Review Committee deferred to its next meeting recommendations for regulations on the disposition of unclaimed cultural items recovered from Federal or tribal lands after 1990.

On January 8, 2008, the Review Committee held a telephonic meeting with the agenda devoted to making comments on the pending proposed rule 43 CFR 10.11, disposition of culturally unidentifiable Native American human remains. The Review Committee requested that the Department of the Interior extend the current comment period, reconsider the Review Committee's 2000 recommendations on the disposition of culturally unidentifiable human remains, revise the proposed rule based on current comments and repropose for additional comment, and seek special appropriations for implementation of the regulations when finalized.

Excavations and Discoveries

Notices of Intended Disposition

An adjusted 66 pairs of notices have been published, an increase of no pairs of notices during FY 2008. Agencies were sent a request to update the National NAGPRA Program of their dispositions not contained in the program records. A listing of these notices is available at: www.cr.nps.gov/nagpra/notices/NID_Tble_Current.pdf.

Regulations

Three reserved sections of the NAGPRA regulations (43 CFR 10) were pending in FY 2007:

- 43 CFR 10.7, Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony, is in development, with consultation with tribes and scientific organizations held on October 14, and with the Review Committee on October 16, 2007. The Review Committee deferred to its spring, 2008 meeting any formal recommendations on this section.
- 43 CFR 10.11, Disposition of culturally unidentifiable human remains, was published as a proposed rule on October 15, 2007, with a comment period until January 14, 2008. The comments and future actions are now being reviewed.
- 43 CFR 10.15(b), Failure to claim where no repatriation or disposition has occurred, is held pending the completion of the above noted regulatory sections.

or more information on regulations contact, C. Timothy McKeown (Tim_Mckeown@nps.gov).

Technical Assistance

Training:

The National NAGPRA Program provides training offered by the program and hosted by tribes, museums and Federal agencies. During this reporting period, staff has presented training and made 17 presentations to 664 participants in addition to supplying training materials for training given by others. For more information on training, contact David Tarler (David_Tarler@nps.gov).

Thus far in FY 2008, National NAGPRA has provided training and program presentations as summarized below with the number of attendees:

DATE	LOCATION	SPONSOR	# OF TRAINEES
Oct. 8	CA	National Association of Tribal Historic Preservation Officers (NATHPO), "NAGPRA Grants for Tribes"	149
Oct. 11	CA	Western Museums Association, "NAGPRA Grants for Museums"	40

Oct. 13	AZ	NAGPRA Training for Tribes, (open to museums & Federal agencies)	55
Nov. 16	IN	Indiana University-Purdue University, "NAGPRA Collections Issues"	43
Dec. 4-5	WA	"Native American Cultural Property Law" (open to tribes, museums, Federal agencies, and the public)	24
Jan. 31	DC	NPS-American University Washington College Of Law, International Art Theft Symposium	35
Feb. 7	OK	Cheyenne & Arapaho Tribe of Oklahoma, "NAGPRA Training"	15
Feb. 11	AZ	University of Arizona, NAGPRA session Telecast	16
Feb. 12	DC	NPS-Federal Preservation Institute, "How NAGPRA Works"	40
Feb. 19	DC	George Washington University, Museum Studies class, "The NAGPRA Process"	8
Feb. 20	KS	Wyandotte County Historical Museum, "NAGPRA Issues for Tribes & Museums"	50
Feb. 25	CA	Getty Institute, "Building an International Cultural Property Law Bibliography to Assist in Provenance Research"	15
March 4	NY	Cardozo School of Law, Public Symposium "Heritage Resources in War & Peace"	82
March 6-7	CA	California Tribes, "Using NAGPRA"	17
March 18	DC	NPS and USDA-FS, Resource Protection "Using the Civil ARPA Process"	23
March 27	VA	Virginia State Parks, "NAGPRA Compliance"	17
March 27	DC	NPS and USDA-FS, "Indian Law and Cultural Property"	35
Total			664
March 17, 24, 31 Broadcast		"Overview of Cultural Resource Protection" (Nine hour series, partnership between NPS, USDAFS, BLM, DOJ, Loras College, Effigy Mounds NM, and Joshua Tree NP)	*

* The total number of participants does not include those accessing the televised training.

Outreach:

During this reporting period the National NAGPRA program provided information to the following:

News outlets and media enterprises:

- Associated Press
- Indian County Today
- Columbus Dispatch

Legislative and public information:

- Library of Congress
- Senator Hastings

In addition to responding to telephone inquiries and email correspondence, including mail sent to the website on a daily basis, in total thus far in FY 2008 approximately 500 inquiries, the National NAGPRA program receives requests for assistance from college students and faculty conducting research projects which rely on Program information. Aides to research by institution are:

- University of Arizona, Rogers College of Law
- Harvard

Website:

The National NAGPRA website provides an opportunity to supply training and technical guidance on a range of NAGPRA matters. Additional items are under development, including a self tested learning module on the notice process.

Illegal Trafficking:

NAGPRA provides criminal penalties for violations of 18 U.S.C. 1170, Illegal Trafficking in Native American Human Remains and Cultural Items. The cases are investigated by Federal law enforcement agents and handled by United States Attorneys throughout the country. National NAGPRA offers training for attorneys and agents and provides technical assistance upon request. For more information on cultural property law and enforcement, contact David Tarler (David_Tarler@nps.gov).

Program Operations

Operational Management:

The National NAGPRA program employed a software contractor to develop a stable format. The contract is nearing completion.

Externs, Interns:

The National NAGPRA program forms partnerships with the National Center for Preservation Education (NCPE), law schools and universities, and the Cultural Resources Diversity Program

within NPS, through the Student Conservation Association (SCA), to offer internships in government service and externships from law schools where students earn course credit. Intern/extern projects provide numerous benefits to the National NAGPRA program and the communities that it serves.

The externs/interns and the projects in progress thus far in FY 2008 are:

Trevor Gross, second year law student, American University Washington College of Law, A *Survey of State Laws Affecting Burials* (supervised by Sherry Hutt and David Tarler)

Jillianne Arguello, second year law student, American University Washington College of Law, A *Survey of State Laws Affecting Burials* (supervised by Sherry Hutt and David Tarler)

National NAGPRA Staff:

The National NAGPRA staff roster as of March 31, 2008 is:

<i>Program Manager:</i>	Sherry Hutt
<i>Program Secretary:</i>	Robin Coates
<i>Program Officers:</i>	Tim McKeown
	David Tarler
	Sangita Chari

In October 2007, Michelle Wilkinson left the National NAGPRA Program to become an Assistant Director of the Reginold Lewis Museum of African American History in Baltimore. Sangita Chari assumed the position of Grants Coordinator on January 7, 2008. On March 12, 2008, the application period closed for the position of Web and Database Coordinator. It is anticipated that this position will be filled by May 1, 2008.

The program is assisted by contractors:

Jaime Lavallee
Lesa Hagel

The Civil penalty investigator is Bob Palmer, in cooperation with NPS Law Enforcement, Resource Protection and Effigy Mounds National Park. The National Park Service is accommodating the National NAGPRA Program on an ongoing basis with law enforcement agents across the country to assist Bob Palmer in collecting information on allegations of failure to comply, as needed.

In addition, the National NAGPRA program receives support from other NPS employees:

Bob Ruff, grants administration
Kathleen Murphy, IT support
Jane Fu, IT support
Randall Bohnert, finance
Joe Wallis, finance, long range planning